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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1943

No. 492

THE EQUITABLE LIFE ASSURANCE SOCIETY  
OF THE UNITED STATES,

*Petitioner,*

vs.

GUY T. HELVERING, Commissioner of Internal Revenue,

*Respondent.*

PETITION FOR A REHEARING ON PETITIONER'S  
PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE SECOND CIRCUIT

JOHN L. GRANT,  
*Counsel for Petitioner,*  
393 Seventh Avenue,  
New York 1, N. Y.



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*To the Honorable, the Chief Justice and the Associate  
Justices of the Supreme Court of the United States:*

The petitioner in the above-entitled cause presents this, its petition for a rehearing on its petition for a writ of certiorari, and in support thereof respectfully shows:

On November 17, 1943, this petitioner filed its petition praying this Court to review the judgment entered herein by the United States Circuit Court of Appeals for the Second Circuit, on two questions, namely:

1. Is the petitioner's reserve called "Present value of amounts not yet due on supplementary contracts not involving life contingencies" a reserve fund for which a deduction is provided by Section 203(a)(2) of the Revenue Act of 1932?

2. If the petitioner is not entitled to the reserve deduction claimed, is it entitled to a deduction under Section 203(a)(8) of the Revenue Act of 1932 in the amount of the "excess interest dividends" paid within the taxable year, pursuant to the provisions of its supplementary contracts not involving life contingencies, as well as the deductions allowed below for guaranteed interest paid on such contracts?

On December 20, 1943, this Court entered the following order herein:

"The petition for writ of certiorari in this case is granted limited to the second question presented by the petition and the case is transferred to the Summary Docket."

The jurisdiction of this Court, the statute and regulations involved, the facts involved, and the reasons for allowing the writ prayed for by this petitioner, are all set out in the petition filed November 17, 1943.

By the order quoted, this Court has decided that it is of sufficient importance to warrant its consideration to determine *how* the deduction under Section 203(a)(8) for interest paid shall be computed, *assuming but not deciding* that this is the deduction intended for supplementary contracts.

The effect of the Court's action is to continue the uncertainty which has heretofore existed as to whether the *reserve* basis under Section 203(a)(2), or the *interest paid on indebtedness* basis under Section 203(a)(8), is the one enacted for computing the deduction for these supplementary contracts.

If this uncertainty is to be removed, it would seem necessary for this Court to decide which is the deduction intended by Congress for supplementary contracts. The determination of this question requires consideration of the first question presented by the petition filed Novem-

ber 17, 1943,—a question not lightly raised in view of the fourteen years of administrative regulations and practice which consistently held the proper deduction for supplementary contracts to be the reserve deduction embodied in Section 203(a)(2) of the Act. *Reg. 62, 65, and 69, Art. 681; Reg. 74 and 77; Art. 971*; (set out in Appendix to original petition).

It is reasonable to assume that Congress intended one or the other of the two deductions provided respectively by Sections 203(a)(2) and 203(a)(8) to apply to supplementary contracts. The Treasury Regulations have always so held, both as originally promulgated and in their amended form as now in effect. But as originally issued and in force from 1921 through 1935, these Regulations held the proper deduction to be that provided by Section 203(a)(2) for reserve funds; and as now amended they hold it to be that provided by Section 203(a)(8) for interest paid on indebtedness.

As to which of these Regulations is correct, the new or the old, is a question never passed upon by this Court nor, except for the decision below, by any Circuit Court of Appeals.

Petitioner is informed that this primary question has been raised in at least two cases in the Tax Court of the United States in which appeals have been filed but no hearing had; is being raised in two cases about to be instituted in the United States District Courts; and will probably be raised in at least three other cases not yet commenced;—all by different life insurance companies. In their normal course these cases will eventually reach the United States Circuit Courts of Appeals for three circuits other than the Second Circuit.

A consideration by this Court of both questions presented by the original petition filed herein will settle the issues involved by definitely determining which of the only

two possibly controlling provisions of the Act provides a deduction for supplementary contracts and how that deduction shall be computed.

But it cannot settle the matter for other litigants and may give scant justice to this petitioner to determine how a deduction for supplementary contracts may be computed under Section 203(a)(8) of the Act without first determining whether the deduction provided by that section is the one intended by Congress for supplementary contracts. Obviously this Court cannot properly determine which of the two sections of the Act was intended to provide a deduction for supplementary contracts without considering the first question presented by this petitioner's original petition.

A proper determination of the issues raised herein would seem to require the consideration of that question.

#### PRAYER

WHEREFORE, petitioner prays that its petition for a rehearing on its petition for a writ of certiorari may be granted; and that upon consideration, this Court may vacate its order entered herein on December 20, 1943, and enter a new order granting the petitioner's petition for a writ of certiorari in this cause on both questions presented by that petition.

Respectfully submitted,

THE EQUITABLE LIFE ASSURANCE SOCIETY  
OF THE UNITED STATES,  
By JOHN L. GRANT,  
*its Attorney,*  
393 Seventh Avenue,  
New York 1, N. Y.

## CERTIFICATE OF COUNSEL

The undersigned, counsel for petitioner herein, hereby certifies that the foregoing petition for a rehearing on petitioner's petition for a writ of certiorari is presented in good faith and not for delay.

JOHN L. GRANT,  
*Counsel for Petitioner.*